

MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

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January 17, 2004

Hon. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W
Washington, D.C. 20554

Dear Ms. Dortch:

RE: MB Docket No. 02-277 (Omnibus Broadcast Multiple Ownership Proceeding)

Pursuant to 47 CFR §1.1206, this will disclose that in connection with this permit-but-disclose proceeding, MMTTC held three meetings, as follows: (1) Jordan Goldstein, Esq., Legal Advisor to Commissioner Michael Copps, January 13, 2004, 2:30 PM; (2) Commissioner Kathleen Abernathy and her Legal Advisor, Stacy Robinson, Esq., January 13, 2004, 3:30 PM; (3) Johanna Shelton, Esq., Legal Advisor to Commissioner Jonathan Adelstein, January 15, 2004, 12:30 PM. MMTTC was represented by Francisco Montero, Esq. and myself at meetings (1) and (2), and by myself at meeting (3). A handout provided at meeting (2) entitled "Discussion Points for Hon Kathleen Abernathy" is attached, along with handouts provided at all three meetings entitled "Potential Initiatives" (9/29/03) and "The Disparity Between Minority and Nonminority Radio Ownership" (10/30/03).

At these meetings we discussed: (1) the potential adoption of incentives to promote minority or disadvantaged broadcast ownership, (2) the desirability of a transactional nondiscrimination rule, (3) the impact of Grutter v. Bollinger, 123 S.Ct. 2325 (2003) on the FCC's racial diversity jurisprudence; and (4) the possible creation of a new class of medium power (e.g. 1,000 watt) FM stations designed to serve small communities. The points we made concerning these matters were all drawn from our pending Petition for Reconsideration in this docket (filed September 4, 2003). We also addressed the desirability of moving suburban minority owned radio stations closer to the audiences they serve so that they can compete more effectively with the cluster owners whose stations tend to be more centrally located. Finally, we questioned why the Commission has not yet acted on petitions for reconsideration, and urged quick action on MMTTC's petition and the other 26 reconsideration petitions

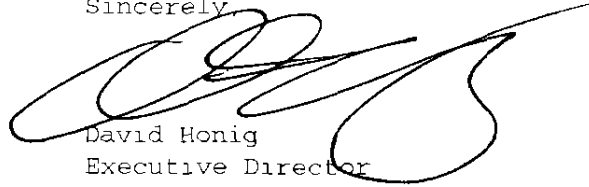
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Hon. Marlene Dortch
January 17, 2004
Page Two.

An original and two copies of this letter are being filed with the Secretary.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Honig', is written over the typed name and title.

David Honig
Executive Director

Attachments

cc Hon Kathleen Abernathy
Stacy Robinson, Esq.
Jordan Goldstein, Esq.
Johanna Shelton, Esq.

cc (by e-mail, w/o attachments):

Francisco Montero, Esq.

/dh



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DISCUSSION POINTS FOR HON. KATHLEEN ABERNATHY

January 13, 2004

- I. Broadcast Ownership: Substantive Issues
 - A. Transactional Nondiscrimination
 - B. Incentive Plans
 - C. Engineering and Related Deregulation
 - D. Impact of Grutter
- II. Broadcast Ownership: Procedural Issues
 - A. Reconsideration
 - B. Further NPRM
 - C. 2004 Omnibus NPRM
 - D. Section 257 Report
- III. On The Horizon
 - A. Multichannel Must-Carry
 - B. DTV Transition
 - C. EEO Rules



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September 29, 2003

MEMORANDUM

TO: Fellow Members, Federal Advisory
Committee on Diversity in the Digital Age

FROM: David Honig, Executive Director, MMTC DH

RE: Potential Initiatives

For several years, MMTC has undertaken to conceptualize and develop public and private sector initiatives aimed at promoting minority ownership and entrepreneurship. Here is a summary of potential initiatives, grouped (albeit with some overlap) into the topic areas into which the Committee will be organized. Some of these proposals were advanced by the Rivera Commission in 1982, by MMTC and NABOB et al. in 1990, or by MMTC and other organizations in 1995, 1996, 1999, 2000, or 2002 or 2003.

Proposals referred to the Advisory Committee by the Commission's broadcast ownership Report and Order are denoted REFERRED, and proposals carried over from the 1982 Rivera Commission are denoted RIVERA COMMISSION.

This list is far from complete, especially with respect to new technologies. But the need is very great, and we'll continue to develop new approaches in the months ahead.

Attachment

/dh

I. Financial issues, such as access to capital

A. Private sector initiatives

- 1A.1 Equity for specific and contemplated future acquisitions (REFERRED)
- 1A.2 Debt on favorable terms — enhanced outreach and access to debt financing by major financial institutions (REFERRED)
- 1A.3 Investments in institutions specializing in minority and small business financing, such as Quetzal, TDF, and SBICs (REFERRED)
- 1A.4 Creation of a business planning center, possibly affiliated with a university, that would work one-on-one with minority entrepreneurs as they develop business plans and strategies, seek financing and pursue acquisitions (REFERRED)
- 1A.5 Executive loans, and engineers on loan to minority owned companies and applicants (REFERRED)
- 1A.6 Survey financial institutions to augment existing surveys to determine the kinds of financing available for telecommunications ventures (RIVERA COMMISSION)
- 1A.7 Develop primer to help minority entrepreneurs present attractive proposals to potential clients (RIVERA COMMISSION)
- 1A.8 Prepare tax bibliography and collect materials that discuss various tax advantages (RIVERA COMMISSION)
- 1A.9 Create new equity fund in which senior industry executives can also “invest” time as a mentor
- 1A.10 Presentation to the American Bankers Association on the attractiveness of radio and minority owned radio specifically

B. Legislative initiatives

- 1B.1 Enactment of tax deferral legislation designed, to the extent possible, to foster minority ownership (REFERRED)

C. Regulatory initiatives

- 1C.1 Nondiscrimination provisions in advertising sales contracts, designed to expressly avoid such practices as “no urban/no Spanish” dictates (REFERRED)

1C.2 Amend multiple ownership rules so venture capital companies can increase their equity participation in minority-operated entities seeking to acquire telecommunications facilities (RIVERA COMMISSION)

1C.3 Structural rule waivers for selling stations to SDBs

1C.4 Tolling buildout deadlines for selling expiring construction permits to SDBs

1C.5 Bifurcation of channels for share-times with SDBs

1C.6 Structural rule waivers for financing construction of an SDB's unbuilt station

1C.7 Grandfathering of nonattribution of EDP interests in SDBs

1C.8 Adopt policy of zero tolerance for ownership rule abuse

1C.9 Allow use of JOAs as an alternative to LMAs and JSAs

1C.10 Market-based Diversity Credits as an alternative to voice tests

1C.11 Reverse the authorization of triopolies

1C.12 Require real-time reporting of changes in eligibility for auction bidding credits

II. Transactional Transparency and Related Outreach

A. Private sector initiatives

2A.1 Enhanced access to broadcast transactions — sellers electing to undertake early solicitations of qualified minority new entrants and afford them the same opportunities to perform early due diligence as the sellers afford to established nonminority owned companies (REFERRED)

B. Legislative initiatives

[None proposed]

C. Regulatory initiatives

2B.1 Ban discrimination in broadcast transactions (REFERRED AS A "TOP PRIORITY")

2C.2 Reverse repeal of the Sales Solicitation Feature of the Failed/Failing/Unbuilt Station Policy

III. Career Advancement

A. Private sector initiatives

3A.1 Incubation and mentoring of future minority owners — programs developed within established media companies (REFERRED)

3A.2 Best Practices book, video, annual conference and website to be developed for industry use

B. Legislative initiatives

[None proposed]

C. Regulatory initiatives

3C.1 Structural rule waivers for creating incubator programs

[Many other proposals are pending in the EEO rulemaking, which we understand to be not within the scope of the Committee's work.]

IV. Emerging technologies (list below includes optimization of "old" technologies)

A. Private sector initiatives

[None proposed]

B. Legislative initiatives

4B.1 Increase FCC Media Bureau staffing to allow far more rapid application processing, clear freezes (especially the 3 1/2 year old AM freeze)

C. Regulatory initiatives

4C.1 Lift the AM freeze

4C.2 Establish application acceptance priorities (SDBs and other pro-diversity transactions go first; most applications go second; full-file review of major mergers goes third)

4C.3 Create two new classes of FM stations: Class A1 (1,500 watts at 100 meters) and Class A2 (1,000 watts at 50 meters)

4C.4 Perform comprehensive engineering search of the FM spectrum to identify the most-needed new drop-in opportunities

4C.5 Replace FM station classes with pure interference-based criteria

4C.6 Relax and update the community of license and transmitter site location rules

V. Proposals crossing jurisdictional lines among the four topic areas

A. Private sector initiatives

5A.1 Encourage the establishment of a nonprofit public foundation in Washington, to complement existing resources, that would provide minorities with comprehensive, expert information about the telecommunications industry (RIVERA COMMISSION)

5A.2 Development of specific literature and courses that address the critical management and technical aspects of telecommunications businesses (RIVERA COMMISSION)

B. Legislative initiatives

5B.1 Change frequency of Section 202(h) from two years to five

C. Regulatory initiatives

5C.1 Examination of how to promote minority ownership as an integral part of all FCC general media rulemaking proceedings (REFERRED)

5C.2 Ongoing longitudinal research on minority ownership trends, conducted by the FCC, NTIA or both (REFERRED)

5C.3 Develop position in OPA to present the Commission with information to maximize opportunities for minority ownership in entry policies and licensing procedures for new technology, and to present information on the impact of deregulatory and structural proposals on minority ownership (RIVERA COMMISSION)

5C.4 Upgrade status, staff of OCBO

5C.5 Analysis of Grutter to determine whether race-conscious programs are permissible (e.g. for defining the eligible category for cluster spinoffs to SDBs)

5C.6 Staged implementation of deregulation, together with a negotiated rulemaking

* * * * *



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October 30, 2003

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For the statistics provided below, data for minority controlled stations includes data in four publicly traded companies, each of which is controlled by minorities. Like the FCC, we refer colloquially to all of these stations as "minority owned." All references below are to commercial stations.

A Number And Value Of Stations Owned

1. In 2001, there were 13,018 radio stations, of which 548 (4.2%) were minority owned and 12,469 (95.8%) were nonminority owned. We calculate that the asset value of minority owned commercial radio stations is now approximately 1.3% of the total asset value of all commercial radio stations (MMTC estimate, 2003). This means that the typical minority owned station is worth only about 30% of the value of the typical nonminority owned station. We call this the "Radio Asset Value Gap."
2. Of the 4,781 AM stations in 2001, 283 (5.9%) were minority owned and 4,498 (94.1%) were nonminority owned. See "Radio Local Market Consolidation & Minority Ownership," Kofi Ofori (MMTC, March, 2002) ("Ofori") (using BIAfn's 2001 database).
3. Of the 8,236 FM stations in 2001, 265 (3.2%) were minority owned and 7,971 (96.8%) were nonminority owned. See Ofori.
4. Of the 548 minority owned stations in 2001, 283 (51.6%) are AM stations; of the 12,469 nonminority owned stations, 4,498 (36.1%) were AM stations. Thus, a minority owned station was 43% more likely than a nonminority owned station to be an AM station. See Ofori

(continued)

B AM Facilities

- 1 Minorities own none of the 25 unduplicated AM "clears." Those licenses were typically given out in the 1920s, a generation before minorities owned any radio stations. See Ofori.
2. Of the 283 minority owned AM stations in 2001, 23 (8.1%) operated between 540-800 kHz. Of the 4,498 nonminority owned AM stations, 569 (12.7%) operated between 540-800 kHz. Thus, minorities were 36% less likely than nonminorities to own these low-band facilities. This means, also, that only 3.9% of the low-band AM stations were minority owned. See Ofori.
- 3 Of the 283 minority owned AM stations in 2001, 96 (33.9%) operated between 1410-1600 kHz. Of the 4,498 nonminority owned AM stations, 1,277 (28.4%) operated between 1410-1600 kHz. Thus, minorities were 19% more likely than nonminorities to own these high-band facilities. See Ofori.

C FM Facilities

- 1 Of the 265 minority owned FM stations in 2001, 20 (7.5%) were full Class C's. Of the 7,971 nonminority owned FM stations, 895 (11.2%) were full Class C's. Thus, minorities were 33% less likely than nonminorities to own these most powerful FM stations in the country. This means, also, that only 2.2% of the full Cs were minority owned. See Ofori.
2. Of the 265 minority owned FM stations in 2001, 128 (48.3%) were Class A's. Of the 7,971 nonminority owned FM stations, 3,185 (40.0%) were Class A's. Thus, minorities were 22% more likely than nonminorities to own these lower power facilities. See Ofori
- 3 Of the 87 minority owned FM stations in the top 50 markets in 2003, 21 (24.1%) were licensed to the dominant community in the market. Of the 897 nonminority owned FM stations in the top 50 markets, 343 (38.2%) were licensed to the dominant community in the market. Thus, minority owned stations were 37% less likely to be licensed to the dominant community in the market as were the nonminority owned stations in the same markets. See "Minority and Nonminority Commercial Radio Owners' Holdings in the Top 50 Markets," MMTC, September 4, 2003.

* * * * *